THE SUPREME COURT ON PATENTS

Court of the United States handed down in the case of Sidney Henry et al. vs.

A. B. Dick Company on March 11, 1912, and just issued by the Supreme Court:

Mr. Justice Brown reviews the cases and shows

The market for the sale was held to be so comprehensive that a patentee. The market for the sale was held to be so comprehensive that a patentee. The market for the sale was held to be so comprehensive that a patentee. The market for the sale was held to be so comprehensive that a patentee. The market for the sale was held to be so comprehensive that a patentee. The market for the sale was held to be so comprehensive that a patentee. The market for the sale was held to be so comprehensive that a patentee. The market for the sale was held to be so comprehensive that a patentee. The market for the sale was held to be so comprehensive that a patentee. The market for the sale was held to be so comprehensive that a patentee. The market for the sale was held to be so comprehensive that a patentee. The market for the sale was held to be so comprehensive that a patentee. The market for the sale was held to be so comprehensive that a patentee. The market for the sale was held to be so comprehensive that a patentee. The market for the sale was held to be so comprehensive that a patentee. The market for the sale was held to be so comprehensive that a patentee. The market for the sale was held to be so comprehensive that a patentee. The market for the sale was held to be so comprehensive that a patentee. The market for the sale was held to be so comprehensive that a patentee. The market for the sale was held to be so comprehensive that a patentee. The market for the sale was held to be so comprehensive that a patentee. The market for the sale was held to be so comprehensive that a patentee. The market for the sale was held to be so comprehensive that a patentee. The market for the sale was held to be so comprehensive that a patentee. The market for the sale was held to be so comprehensive that a patentee. The market for the sale was held to be so comprehensive t

The facts and the questions certified, omitting the terms of the injunction awarded by the Circuit Court, are these:

"This action was brought by the complainant, two letters patent, owned by the complainant, as the 'Rotary Mineograph.' are doing business as copartners in the City of New York. The complainants sold to one Christina B. Skou, of New York, a Rotary Mimeograph embodying the inventions de-scribed and claimed in said patents under license which was attached to said machine.

"LICENSE RESTRICTION.

"This machine is sold by the A. B. Dick Co. with the license restriction that it may be used only with the stencil paper, ink and other sup plies made by A. B. Dick Company, Chicago,

"The defendant, Sidney Henry, sold to Miss Skou a can of ink suitable for use upon said mimeograph with knowledge of the said license agreement and with the expectation that it would be used in connection with said mimeo-The ink sold to Miss Skou was not povered by the claims of said patent."

"QUESTION CERTIFIED.

"Upon the facts above set forth the question concerning which this court desires the instruc- seller."

"Did the acts of the defendants constitute contributory infringement of the complain-

JURISDICTION OF THE COURT.

this is a suit of which the Circuit Court has jurisdiction as a suit arising under the patent law, it the p may be well to notice an argument against dition jurisdiction based upon the suggestion that if a The books abound in cases upholding the breach of such a license restriction will support light of a patentee owner of a machine to a sult for infringement, direful results will fol license another to use it subject to any qualificourts and an extension of the jurisdiction of restriction will support a suit for infringement, parties will be deprived of the right to have the validity and import of the license restriction determined by the general law, and be compelled to have their rights determined by the patent law.

Stop to the cases.

The contention is not that a patentee may not permit the use of a patented thing with such qualifications as he sees fit to impose, and that a prohibited use will be an infringing one. parties will be deprived of the right to have the stop to cite cases.

We are unable to assent to these suggestions. principles of general law. Obviously, a suit for The jurisdiction of the circuit court over such might impose, and enforceable, if valid at all, the property of the statute, only as a collateral contract.

The issue is a pisto one. If it be sound its construction. But with what eye shall the sound its construction.

a use in violation of the restrictions less reserve to ce thereof, but, on the contrary, has been ever watchful to maintain those lines as obligatory alike upon all courts and all suitors. We come, then, to the question, whether a

That the license agreement constitutes a contract not to use the machine in a prohibited manner is plain. That defendants might be sued upon the broken contract, or for its enforcement or for the forfeiture of the license, is ewise plain. But if by the use of the machine in a prohibited way Miss Skou infringed the patent, then she is also liable to an action under the patent law for infringement. Now that is ne brought to restrain the defendants as aiders

and abettors to her proposed infringing use.

That the patentee may waive the tort and sue upon the broken contract, or in assumpsit, is elementary. Robinson on Patents, secs. 1225, 1250, and notes; Steam Cutter Co. v. Sheldon, 15 on Fastener Cases, 67 Federal, 288, 291; Wilson v. Sandford, 10 Howard, 99. But If upon the covenants or for a breach of contract, the suit would not be one dependent upon or arising out of the patent law, and a Federal court would have no jurisdiction unless diver-sity of citizenship existed. Hobinson on Patentssec. 1250; Magic Ruffle Co. v. Eim City Co., 13 Blatchford, 63; Goodyear V. Congress Rubber measured by the loss resulting from the infringement. Magic Ruffle Co. v. Elm City Co., 3 Blatenford, 151. After such a recovery in esumpsit, no further damages for the inringement can be obtained, Steam Cutter Co. v. Sheldon, 15 Federal, 608.

The remedy which the complainant seeks may often determine whether the suit is one arising under the patent law and cognizable only in a ourt of the United States, or one upon a con fract between the patentee and his assigns or censees, and, therefore, cognizable only in a State court, unless there be diversity of citizen-Thus, a bill to enforce a contract con cerning the title to a patent, or an interest there to deciare a forfeiture of an assignment of an interest in a patent or even a license to recover damages for a breach of a contrac relating to a patent or a license thereunder. would not, because of the character of remedy or relief sought, be a suit cognizable is suited States court, although the facts stated might have justined a suit for infringement in a United that remedy. To sustain the contention that a machine in question except in a particular way might have supported a suit to forfeit the license contract, counsel have cited and commented at great length upon the cases of Wilson v. Sand-

the Court of Appeals Act of March 31, graph from the same opinion in these words: as a mere waiver of the right to sue by the sale of articles manufactured under letters "Now, it may be freely conceded that if the il- patentee. Robinson on Patents, secs. 806, 808. patent may be prevented when the use of such censee had falled to observe any one of the We repeat. The property right to a patented article may be subject, within the several three conditions of the license, the licensor machine may pass to a purchaser with no right states, to the control which they may respectively limpose in the legitimate exercise of their courts, either to recover the royalties or to way, or at a specified place, or for a specified powers over their purely domestic affairs, procure a revocation of the license: Such suit purpose. The unlimited right of exclusive use whether of internal commerce or of police law." But the three conditions of the license patentee will be granted if the sale be unconthere referred to were: First, to pay royalties: ditional. But if the right of use be confined by fringement, but one arising in a suit to enforce second, that the transferee would not transfer or assign the license without consent of the The defendants | licensor; third, that the failure to use the license in the manufacture of pipe should operate to violated, the patent is thereby invaded. This ments covered only patented articles. The revoke it. It is evident that the licensee would right to sever ownership and use is deducible court, after referring to the exceptions to the not have infringed the patent by either falling to pay royalties, by assigning the license, or by neglecting to use his privilege. The licensor would clearly have been compelled to rely wholly upon his contract, as such, in any suit for the violation of any of the conditions named. . .

PATENTEE MAY FIX TERMS OF LICENSE.

That a patentee may effectually restrict the time, place or manner of using a patented ma-chine, so that a prohibited use will constitute an infringement of the patent, is fully conceded Thus, in the printed brief counsel for defendants say: "Aside from such special contracts. an agreement that the article shall be used only in a certain manner, can be made only by way of lease of the article, terminating the lease upon condition broken, or by way of conditional sale, by breach of which the title reverts to the In either such case, counsel say, "a use of the article in violation of the condititerminate the lease or sale of the article (which) would become the property of the patentee again, and a use thereof by the lessee or purchaser may constitute a violation of the patent, for which an infringement may lie. . . . He cannot make a sale with the condition attached

low. Chief among the results suggested are, an encroachment upon the authority of the State pose of use which the licensee agrees to accept. Any use in excess of the license would obviously the Federal courts. And to swell the grievance be an infringing use and the license would be it is said that if it be held that a breach of such a no defense. Robinson on Patenta, sec. 915, 916 and notes. This is so elementary we shall not

but that he can only keep the article within the We do not prescribe the furisdiction of courts, control of the patent by retaining the title. by the metal tablet annexed to the machine. Federal or State, but only give effect to it as fixed by law. If a bill asserts a right under the that any transfer of the patentee's property patent law to sell a patented machine subject right in a patented machine carries with it the o restrictions as to its use, and alleges a use in right to use the entire invention so long as the violation of the restrictions as an infringement identity of the machine is preserved, irrespec-of the patent it presents a question of the exent of the patentee's privilege, which, if deter- upon the use of the article and accepted by the mined one way, brings the prohibited use within buyer. It is said that by such a sale the pat-the provisions of the patent law, or, if deter-cutee ."disposes of all his rights under his ed the other way, brings into operation only patent, and thereby removes the article from notice that he buys with only a qualified right aciples of general law. Obviously, a suit for the operation of the patent law." If he atinfringement, which must turn upon the scope tempts to sell the machine for specified uses of the monopoly or pri vilege secured to a paten- only and prohibit all others, the restriction is ee, presents a case arising under the patent law. disposed of as constituting a collateral agreejurisdiction of the Circuit Court over such ment such as any vendor of personal property

a patented machine subject to restrictions as that where a patentee sells his machine for a the inventor with the narrow scruting proper such a ruling may draw to the Federal courts right to all unpermitted uses which may be made of his invention as embodied in the machine sustained without placing our decicannot be sustained without placing our deciconsiderations which are quite apart under the patent law. By a sale of a patented from the law. This, of course, we may not do. article subject to no conditions the purchaser In determining questions of jurisdiction, this undenlably acquires the right to use the article court has never shirked the responsibility of for all the purposes of the patent so long as it maintaining the lines of separation defined in endures. He may use it where, when, and how the Constitution and the laws made in pursu- he pleases, and may dispose of the same unlimited right to another. This has long been the settled doctrine of this and all patent

The distinction between the sale of a machine free from specific restrictions upon the right of use and a sale subject to such limitations becomes the more evident, in view of the fact that but for the license to use only for the remainder of the original patent term the purchaser would have acquired the right to continue the use during an extended term of the same patent. This was the express holding in the two prior cases of Wuson v. Rosseau. 4 Howard 646, and Bloomer v. McQuewan, 14 Howard 539. ditional purchaser was faid down in the strong-

SEPARABLE RIGHTS IN PAT-ENTED ARTICLES.

An absolute and unconditional sale operates to pass the patented thing outside the boundaries of the patent, because such a sale implies that the patentee consents that the purchaser may use the machine so long as its identity is preserved. This implication arises, extends to the right of making, selling and first, because a sale without reservation, of a machine whose value consists 538, 547, it is said that the grant is of "the right | with it the presumption that the right owner." to use the particular machine is to pass of certain contracts between patentees of and stated in Robinson on Patents, section effect of the combination and the parties was to fix and keep up the between the parties was to fix and keep up the unconditional. Not only may the pat- harrows. It was claimed that the combination entee impose conditions limiting the act; but, upon the other side, it was said that use of the patented article, upon his as the contracts concerned only the sale of patentees and express licensees, but The character of the monopoly granted under the patentactwas therefore involved. Touching the patentactwas therefore involved. Touching at the time of sale restrict the use of his time or place or method, and these will license arising from the sale."

The argument for the defendants ignores the distinction between the property right in the expectation that he will either put his invention materials composing a patented machine, and to practical use or permit others to avail themthe right to use for the purpose and in the selves of it upon reasonable terms, is doubtless manner pointed out by the patent. The latter true. This expectation is based alone upon may be and often is the greater element of the supposition that the patentee's interest will Tilghman 90 U. S. 547; Pratt v. Parts Light invention. But the two things are separable to enforce such expectations. A suppression Co., 168 U. S. 255; Keeler v. Standard Folding rights. If sold unreservedly the right to the can endure but for the life of the patent, and the S. 659, and Bement v. National entire use of the invention passes, because that disclosure he has made will enable all to enjoy Harrow Co., 186 U. S. 70; but an examination of its the implied intent; but this right to use is the fruit of his genius. His title is exclusive these cases will disclose that while in some of nothing more nor less than an unrestricted and so clearly within the constitutional pro-

*Mr. Justice Lubron delivered the so plainly why they were not patent cases that he can escape liability to the patentee for the during a long term of years, neither used his we shall only refer to that opinion. opinion of the Court:

This cause comes to this court upon

a certificate under the sixth section of the Courts, counsel quote a para
This cause comes to this court upon their contention that the only remedy for a violation of the license under which Miss Skou acquired for her machine avail as a defense. As a license passes no lisone in the State courts, counsel quote a para
This cause comes to this court upon which Miss Skou acquired for her machine avail as a defense. As a license passes no lisone in the State courts, counsel quote a para
This cause comes to this court upon which Miss Skou acquired for her machine avail as a defense. As a license passes no lisone in the State courts, counsel quote a para
This cause comes to this court upon which Miss Skou acquired for her machine avail as a defense. As a license passes no linterest in the monopoly, it has been described "It is true that in certain circums."

would not involve any question under the patent which is possessed by and guaranteed to the regulation. specific restriction, the use not permitted is certain contracts directly restraining com-necessarily reserved to the patentee. If that merce in patented articles, which were claimed reserved control of use of the machine be to violate the Sherman law, although the agreefrom the nature of a patent monopoly and is recognized in the cases.

RESTRICTION MUST BE KNOWN TO PURCHASER.

It is plain from the power of the patentee to subdivide his exclusive right of use that when he makes and sells a patented device that the extent of the license to use which is car ried by the sal the monopoly or fix prices does not render them must depend upon whether any restriction was placed upon the use and brought home to the person acquiring the article.

That here the patentee did not intend to sell the machine made by it subject to an unre stricted use is of course undeniable from the words upon the machine. . . .

The meaning and purpose of this restriction was that while the property in the machine was to pass to the purchaser, the right to use the invention was restricted to use with other articles required in its practical operathat the article shall be used or disposed of in a certain manner, leaving the title, however, in the purchaser in case of a breach of the consold its machines at cost, or less, and depended non-patented articles adapted to be used with thousands of such machines under the same license restriction. Such a sale, while transferring the property right in the machine arries with it only the right to use it for practhe license. To no other or greater extent does the patentee consent to the use of the machine. When the purchaser is sued for infringement by using the device, he may defend by pleading, not the general and unlimited license which is carried by an uncon ditional sale, but the limited license indicated by the metal tablet annexed to the machine.

If, then, we assume that the violation of restriction upon the use of a machine made and sold by the patentee may be treated as posed upon a purchaser.

unconditional title to the machine, with no limitation upon the use. Where, then, is the line between a lawful and an unlawful qualificaas a constant.

The issue is a plain one. If it be sound, it one concludes the case, and our response should be tion and laws of the United States is only concurred a negative one, since the violation of a mere collateral contract, which is not also sound, it or construction. But with what eye management to try construction. But with the concludes the case, and our response should be a negative one, since the violation of a mere to try construction. But with the constitution of the concludes the case, and our response should be a negative one, since the violation of a mere to try construction. But with the constitution of the co himself, as patentee, the exclusive a claim which is lacking in those moral elements which unpermitted uses which may be which appeal to the normal man? Or shall ends are to be attained, and, therefore to be construed so as to give effect to a wise and beneficial purpose? That we must neither transcend the statute, nor cut down its clear Harrow Co., 186 U. S. 70, 89, 90, 917 and 92, this Chief Justice Marshall in Grant v. Raymond 6 Peters, 218, 241. Concerning the favorable view which the law takes as to the protection

to give effect to the purpose ought, we think, to be construed in the spirit in which they have been made; and to execute the contract fairly contracted to receive. The full benefit of the discovery, after its enjoyment by the discoverer for fourteen years, is preserved; and for the exclusive enjoyment of it during that time the public faith is pledged."

RESTRICTIONS THAT ARE PER-

If the patent be for a machine, the monopoly using, and these are separable and substantial In Bement v. National Harrow Co., effect of the combination and of the contracts 824: "The sale must furthermore be prices at which licensees might sell the patented the right of the patentee to exclude all others vendes within specific boundaries of with approval what was said in the Button then become the measure of the implied exclusive use of his invention or discovery. others to use it, he has but suppressed his own.

And so in the Bement case, the court said of

"It is true that in certain circumstances the tively impose in the legitimate exercise of their

patentee's monopoly resulting from conflict with the police power of the State, said:

"Notwithstanding these exceptions, the genrights under the patent laws of the United States the rule is, with few exceptions, that any condi tions which are not in their very nature illegal with regard to this kind of property, impose by the patentee and agreed to by the licensee article, will be upheld by the courts. The fact Illegal."

The cours in that case found that the contracts did include interstate commerce within their provisions and restrained interstate trade, but with reference to the Sherman act said: "But that statute clearly does not refer to that kind of a restraint of interstate commerce of a patent by the owner thereof, restricting a construction of the act, we have no doubt, As to whether the restrictions upon sales

imposed by the agreements were "legal and reasonable conditions" the court said: under the license was also an appropriate and reasonable condition. It tended to keep up the price of the implements manufactured and sold, but that was only recognizing the nature of the property dealt in, and providing for its value so far as possible. This the parties were legally entitled to do. The owner of a price as he may choose, and the owner of a patent may assign it or sell the right to manutain amount for such article."

If the stipulation in an agreement articles, which, among other

UNPATENTED ARTICLES.

made by the patentee is one of a character which gives to a patentee the power "It s the reward stipulated for the advantage derived by the public for the exertions of the individual, and is intended as a stimulus to those exertions. The laws which are passed to give effect to the purpose ought, we think a condition is to cause things to become is legislative, not judicial. The decisions any restrictions in regard to the use or sale of the goods, and it is out of the question to sugpatented which were not so without of this court, as we have construed them. gest that restrictive conditions run with the patented which were not so without do not so limit the privilege of the rest. full benefit has been actually received; if this the requirement. The stencil, the paper do not so limit the privilege of the patcounsel in this case as equally applicable a sale subject to a registered use.

Can be done without transcending the intention of the statute, or countenancing acts which are fraudulent or may prove mischievous.

The public yields nothing which it has not and the ink made by the patentee. The stencil, the paper entee, and we could not so restrict a provinge of the statute, or countenancing acts which are fraudulent or may prove mischievous.

The public yields nothing which it has not an experiment. The stencil, the paper entee, and we could not so restrict a continue to be unpatented. Anyone The public rieids nothing which it has not agreed to yield. It receives all which it has will be as free to make, sell and uso like line of judicial decisions from Circuit that the person purchasing them, and articles as they would be without this restriction, save in one particular heretofore cited, thus inflicting disasnamely, they may not be sold to a user trous results upon individuals who have bound by that knowledge and accept the situaof one of the patentee's machines with made large investments in reliance upon These limitations are merely the respect paid intent that they shall be used in violation of the license. To that extent competition in the sale of such articles, for use with the machine, will be affected; for sale to such users for infringing The conclusion we reach is that there in its use, for a consideration, carries to exclude every one from making, using or quence results from the sale of any the time, place or purpose of use and rearticle to one who proposes to associate strictions requiring a use only with of conditions and the bringing home to the with it. The rule and its reason is thus dealers in patented harrows. The purpose and when such purpose is known to the patented article purchased from the at great length and the process of the mach ness that they should now be overruled. To apply to some or all of the uses included in the case to me, provided you will agree to use these courts has been committed the is, does the sole right to vend mammed in (4982). in connection therewith." if he chooses the patent law. There is no power in restrict future sales of the book at retail, to the in connection with the facts certified, we must Harrow Co., 186 U. S. 70; but an examination of the fruit of his gentus. His title is exclusive, the fruit of his gentus. His title is exclusive, and so clearly within the constitutional prothese cases will disclose that while in some of a notice in the book that a sale at a certain price per copy, bethese cases will disclose that while in some of a notice in the book that a sale at a
them a suit for infringement might have been license presumed from an unconditional sale.

If the fruit of his gentus. His title is exclusive, and so clearly within the constitutional protaking it by a higher price for the maexcept upon a writ of certification of this case.

This is the decision of the Supreme brought the complainants had in fact brought A license is not an assignment of any interest permit others to use his discovery himself nor permit others to use his discovery him right to make, sell and use his patented machines? The market for the sale of such articles to the users of his matakes to himself, was a market which he alone created by the making and selling of a new invention. Had he kept his invention to himself, no ink could have been sold by others for use upon machines embodying that invention. By selling it subject to the restriction he took nothing from others and in no wise restricted their legitimate

FANCIFUL SUGGESTIONS - ANSWERED.

For the purpose of testing the conse quence of a ruling which will support the lawfulness of a sale of a patented machine for use only in connection with supplies necessary for its operation bought from the patentee, many fanciful suggestions of conditions which might be imposed by a patentoe have been pressed upon us. Thus it is said that the conditions in the contracts keep up that a patentee of a coffee pot might sell on condition that it be used on! gwith coffee bought from him, or, if the article be a circular saw, that it might be sold on condition that it be used only in sawing logs procured from him. These and which may arise from reasonable and legal other illustrations are used to indicate that this method of marketing a patented the terms upon which the article may be used article may be carried to such an extent and the price to be demanded therefor. Such as to inconvenience the public and involve innocent people in unwitting infringements. But these illustrations all fail of their purpose, because the public "The provision in regard to the price at which is always free to take or refuse the pat_ ented article on the terms imposed. If they be too onerous or not in keeping with the benefits, the patented article will not find a market. The public, by permitting the invention to go unused patented article can, of course, charge such loses nothing which it had before, and when the patent expires will be free to facture and sell the article patented upon the use the invention without compensation in that the assignee shall charge a cer-Paper Bag case, where the inventor would neither use himself nor allow others to between patentees and dealers in pat- use, and yet was held entitled to restrain infringement, because he had the excluthings, fixed a price below which the sive right to keep all others from using patented articles should not be sold, during the life of the patent. This infringement, we come to the question of the would be a reasonable and valid con- larger right embraces the lesser of perdition, it must follow that any other mitting others to use upon such terms reasonable stipulation, not inherently as the patentee chooses to prescribe violative of some substantive law, im- It must not be forgotten that we are dealposed by a patentee as part of a sale ing with a constitutional and statutory of a patented machine, would be equally monopoly. An attack upon the rights valid and enforceable. It must also under a patent because it secures a follow, that if the stipulation be one monopoly to make, to sell and to use, which qualifies the right of use in a is an attack upon the whole patent sysmachine sold subject thereto, so that a tem. We are not at liberty to say that The suggestion, therefore, that we should fringement of the patent would not be a case we deal with the statute creating and guarant upon the contract, it would be at the for granting a monopolistic right to instance and suggestion. same time an act of infringement, giving ventors, or that Congress has unwisely inventor's exclusive right of use. And admissible. * * NO MONOPOLY CREATED IN if it be that the ingenuity of patentees in devising ways in which to reap the cases, the court continued: benefit of their discoveries requires to be restrained. Congress alone has the Judicial Committee of the Privy Council, and Judicial Committee of the Privy Council, and But it has been very earnestly said that a condition restricting the buyer to use it only in connection with ink power to determine what restraints shall reported in 27 Times Law Reporter, 230, the to extend his monopoly so as to cause upon this and upon every other court of the court said: "To begin with the general

EXTENT OF PATENT

PROTECTION. purposes will constitute contributory is no difference, in principle, between a sale, much, if not all, may be implied as to the infringement. But the same conse- sale subject to specific restrictions as to consent of the licensee to an undisturbed and it with other articles to infringe a patent, other things necessary to the use of the seller. But could it be said that the patentee. If the violation of the one THE CONSTITUTION AND THE or sell the article will be upheld by the courts. doctrine of contributory infringement kind is an infringement, the other is also. operates to extend the monopoly of That a violation of any such restriction the patent over subjects not within it annexed to a sale by one with notice 207 U. S. 199, and Bobbs Merrill Co. v. Strauss. because one subjects himself to the constitutes an infringing use has been 210, U. S. 345, and referring to the radical difpatented things for an infringing use? cuit Courts and Circuit Courts of Appeal, by them, the court continued: If a patentee says, "I may suppress and has come to be a well-recognized wrote a leading case on the subject in the Federal facts of the cases." my patent if I will. I may make and principle in the patent law, in accordance make devices under my patent, ance with which vast transactions in rebut I will neither sell nor permit anyone spect to patented articles have been conto use the patented things," he is within ducted. But it is now said that the the right of multiplying and vending copies of a not use the ink, soid by them directly to her. his right, and none can complain. But numerous decisions by the lower courts and the rights secured to an inventor under the if he says, "I will sell with the right to have been erroneous in respect to the patent statutes, that the cases which relate to use only with other things proper for proper construction of the limit of the as to the other." used in a non-infringing way, for the certifien fact is that they made the sale, "with the exusing with the machines, and I will monopoly conferred by a patent, and sell at the actual cost of the machines that they should now be overruled. To only such articles as are made by me duty of interpreting and administering secure to the owner of the copyright the right, used after the sale of the book to a purchaser, to So

The Supreme Court Decides:

Patent rights are directly derived from the Federal Constitution.

The patentee has the EXCLUSIVE RIGHT to make, sell and use the patented article. Like the owner of any other property, he may sell or dispose of his property upon any REASONABLE CONDITION.

The patentee may sell or dispose of the patented article on condition that the purchaser use only such accessories as are made by the patentee.

The public is free to take or refuse the patented article on the terms imposed. If the terms are too onerous, the public loses nothing, for it may decline to buy or use the patented article; and when the patent expires, the public will be free to use the invention without compensation or restriction.

"We are dealing with a CONSTITUTIONAL and statutory monopoly. An attack upon the rights under a patent, because it secures a monopoly to make, to sell and to use, is an attack upon the WHOLE PATENT SYSTEM."

direct their decisions, save through a which notice has been brought beme to one certified interrogatory for direction upon undertaking to sell for less than the named sum?
We do not think the statute can be given such a dom exercised in patent cases. A line of tion, nor license agreement controlling the sub decisions, which has come to be some-

After quoteng a number of English patent

In the very late case of the National Phono cases were cited and reviewed. Referring to be imposed. As the law now stands it the distinction between the principles applicontains none, and the duty which rests cable to sales of unpatented and patented articles, Lord Shaw, in delivering the opinion of the conditions attached by the Courts and Circuit Courts of Appeal, knowledge patentee, which knowledge is clearly brough home to himself at the time of sale, shall be and the effect given to those conditi transfer of the patented article which the law head should be changed and the power of sale a limited area, or for a particular use, while to sub mode should be withdrawn or limited is not a question for a court. It may be added that where a patented article has been acquired by purposes. unrestricted use thereof. In short such a sale

PATENT LAWS.

After distinguishing and quoting from Cotto ferences between the patent and copyright There is no collision whatever between the statutes, in the extent of the protection

production protected by the copyright statute in connection with the licensed machine, with-

a question of law. This power to review construction, and it is to be remembered that this by certiorari is one which has been selis purely a question of statutory construction.

thing like a rule of property under which large businesses have been conducted, should at least not be overruled except disclosed in this case, a limitation at which the upon reasons so clear as to make any other construction of the patent law in.

book shall be sold at retail by future purchasers, with whom there is no privity of contract. This conclusion is reached in view of the main purpose to secure the right of multiplying creation of the statute. . . .

> Though the Constitution gives to Congress securing for a limited time to writers and inventors "the exclusive right to their respective writings and discoveries." the legislation for this purpose had to be adapted to the difference secure to the author an exclusive right to his have "the sole liberty of printing, reprinting, publishing, completing, copying, executing, unishing and vending the same." Revised Statutes, 4952. This is, in short, the sole right While there are resemblances between the right of the author to "vend" his copyrighted pro-duction, and of the patentee to "vend" the patented thing, the inherent difference between or a picture, and that of an inventor, be it a that the exclusive right of one to multiply and sell was declared sufficient to give him that exclusive right to his writings purposed by the Constitution. To the inventor, by Section 4884 sive right to make, use and vend the invention v. McQuewan, 14 Howard, 549, "consists altogether in the right to exclude every one from making, using or vending the thing patented. Thus, there are several substantive rights, and person may be permitted to make, but neither to sell nor use the patented thing. To another may be conveyed the right to sell, but within We have already pointed out that in the

Bement Case, 186 U. S. 91, it was said in respect of the power of a patentee that, in the saie of right under a patent, "with few exceptions any conditions which are not in their nature imposed by the patentee and agreed to by the licensee, for the right to manufacture, or use (Italics ours.) The question, as was said in reference to the copyright, is one of statutory construction. The kinds of property rights two statutes are so different that very different decision in the Bobbs-Merrill case and the present opinion. Each rests upon a construction of the applicable statute, and the special

of the patented article, with knowledge that out infringement of the monopoly of the patent. It is not open-to them to say that it might be fact is that they made the sale, "with the exwith said mimeograph." The fair interpretation of the facts stated is that the sale was with the purpose and intent that it would be so